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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BASLER SECURITIES VERSICHERUNGS AG

Plaintiff,

- against -

AMERICAN AIRLINES, INC.; EXPEDITORS  
INTERNATIONAL OF WASHINGTON, INC.; TOWNE  
AIR FREIGHT, INC.; and CENTRAL STATES  
TRUCKING COMPANY,

Defendants.

**ECF CASE**

**07 CIV 7866  
(Judge Preska)**

**TOWNE AIR FREIGHT, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO  
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.'s CROSS-CLAIMS**

Defendant, Towne Air Freight, Inc. ("Towne"), by its attorneys, Barry N. Gutterman & Associates, P.C., for its Answer and Affirmative Defenses, to Expeditors International of Washington, Inc.'s ("Expeditors") Cross-Claims, states as follows:

- 1-24 Towne does not respond to paragraphs 1-24 of Expeditor's Answer and Cross-Claims as such allegations are not addressed to it.
25. Towne denies the allegations contained in paragraph 25 of Expeditor's Cross-Claims.

26. Towne denies the allegations contained in paragraph 26 of Expeditors's Cross-Claims.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

27. Expeditors fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

28. In the event that Expeditors had no title or interest in the shipment that is the subject matter of this action, then Expeditors is not the real party in interest herein and is not entitled to maintain this suit.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

29. The contract of carriage does not contemplate responsibility for special or consequential damages. To the extent that Expeditors seeks special and/or consequential damages, Towne is not responsible for such amounts.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

30. If the shipment referred to in the Cross-Claims suffered any loss, damage and/or delay, which is herein expressly denied, such loss, damage and/or delay was caused by acts or omissions by a third party or a party over whom Towne had no control.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

31. Towne is not guilty of any negligence which was a proximate cause of any alleged loss or damages of which Expeditors complains.

**AS AND FOR AN SIXTH  
AFFIRMATIVE DEFENSE**

32. Any loss or damages alleged to have occurred was solely due to the negligence of Expeditors or others acting on its behalf.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

33. In the event that Towne handled the subject shipment, then whatever shipments were received for transportation by Towne was accepted in accordance with, and subject to all the terms and conditions of the bill of lading contract and all applicable transportation contracts, classifications and tariffs, rules and regulations set forth therein, and the rules, regulations and practices of Towne, which together form the contract of carriage respecting the transportation of said shipment. In the event that Towne handled the subject shipment, Towne duly performed all the terms and conditions of said contract of carriage on its part to be performed.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

34. In the event that Towne handled the subject shipment, then to the extent that Towne did not load, count or secure the subject shipment, it cannot be held liable for any damage to the shipment caused by improper loading, packaging, and/or securement based upon the provisions of applicable law.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

35. To the extent that the contract of carriage provided for any limitation of liability for any loss or damage to the shipment in question, Expeditors cannot recover in excess of this amount.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

36. To the extent that a proper written notice of claim was not timely filed, the within action is time barred.

**AS AND FOR A ELEVENTH  
AFFIRMATIVE DEFENSE**

37. To the extent that Expeditors failed to bring timely cross-claims, the within action is time barred.

WHEREFORE, defendant Towne Air Freight, Inc. requests that judgment be entered herein dismissing the Cross-Claims, together with interest, costs, disbursements and attorneys fees incurred herein, and such other further and/or different relief as the justice of the case may require.

Dated: New York, New York  
January 2, 2008

By: /s/ Barry Gutterman  
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